HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 457 of 1997.
Reserved on: 31.7.2007.
Decided on: 6.8.2007.

Hem Raj ..... Petitioner.

Versus

H.P.State Electricity Board and another .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? Yes.

For the petitioner: Mr.O.P. Thakur, Advocate.
For the respondents: Mr.Shrawan Dogra, Advocate.

Per V.K. Ahuja, J.:

This civil writ petition has been filed against the order passed by the H.P. State Administrative Tribunal in Original Application No.1713 of 1996 as well as in review petition No.41 of 1996.

Briefly stated the facts of the case are that the petitioner had initially filed CWP No.569 of 1996, alongwith three others, in this Court against the retrenchment of services as effected by the respondent-HPSEB. The writ petition was dismissed by this court vide its order dated 30.9.1996 holding that it was not maintainable in view of the provisions of Administrative Tribunal's Act, 1985. After the dismissal of the writ petition, the services of the petitioner,

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

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who had been re-engaged pursuant to the interim order passed in the writ petition, were again retrenched vide order dated 5.11.1996.

The said retrenchment was challenged by the petitioner by filing Original Application before the H.P. State Administrative Tribunal. The said Original Application was taken up by a Member (Administrative) of the Tribunal and the same was dismissed even without calling upon the respondents to file reply to the Original Application. It was dismissed on the ground that there was no post of Assistant Foreman in the respondent-Board and that his initial appointment as Assistant Foreman was wrong. The petitioner filed Review Petition No.41 of 1996 before the Tribunal and alongwith the Review Petition, the petitioner also annexed a copy of order passed by a Division Bench of this Court in CWP No.100 of 1988 and urged that the settlement arrived at before the Supreme Court on which basis the petitioner had filed the Original Application was to apply to all similarly situated persons. It was alleged that the petitioner having completed more than five years uninterrupted service was also entitled for regularization against the appropriate vacancy. The Review Petition was taken up by a Division Bench of the Tribunal and the same was dismissed vide order dated 28.8.1997. Hence the present writ petition filed by the petitioner.

By way of this writ petition, the petitioner has claimed the following relief:

> That the impugned orders passed by the Tribunal on 19.11.1996 as well as on 28.8.1997 be set aside and the Original Application filed before the Tribunal be allowed.

In reply filed by respondents No.1 and 2, they took up the plea that the petition was not maintainable in view of its dismissal firstly, by this Court on the

ground of jurisdiction and secondly, by the Administrative Tribunal as well as thirdly, on the ground of dismissal of Review Petition since the petitioner could not show any error apparent on the face of the record.

It was pleaded that the petition has been filed by the petitioner with an ulterior motive to seek employment irrespective of the non-availability of post of Assistant Foreman. Thus, it was pleaded that there is no infirmity in the orders passed by the Tribunal and the writ petition is liable to be dismissed.

We have heard the learned counsel for the parties and have gone through the record.

The petitioner was initially engaged as *Beldar* w.e.f. 25.11.1989 as admitted by the respondents in their reply and was wrongly deployed as Assistant Foreman which post was not available with the respondents. In view of the fact that the post of Assistant Foreman was not available, he was offered the post of *Beldar* which was his initial post and he worked as *Beldar* w.e.f. 25.2.1996 to 31.3.1996. The petitioner left the job w.e.f. 1.4.1996 and filed a petition alongwith others that he should be allowed to continue in the same post. In pursuance of the interim order passed in the writ petition by this court, the petitioner was re-deployed as Assistant Foreman irrespective of the non-availability of the post of Assistant Foreman. The services of the petitioner were retrenched in accordance with law since there was no post of Assistant Foreman as admitted by the respondents in their reply and they also pleaded that a cheque of Rs.7200/- was paid to the petitioner on account of one month salary in lieu of one month's notice as per provisions of Industrial Disputes Act which allegedly was not got encashed by the petitioner.

The petitioner had challenged his termination before the Tribunal which dismissed the application in limini since there was no post of Assistant Foreman

and engagement of the petitioner was wrong as Assistant Foreman. A perusal of the judgment of this Court dated 13.12.1994 in CWP No.100 of 1988 filed by some of the employees of the respondents shows that a reference was made to the decision of the apex court in Giri P.H. Denik Karamchari Sangathan and others v. HPSEB in CWP No.788 of 1987 and a settlement was arrived at in that case before the apex court and accordingly the Board was directed to regularize daily paid workers working in various units having completed five years service on the basis of seniority and subject to availability of posts. A plea was taken in that case that this settlement was only one time settlement and would not apply to those completing five years service after 30.4.1991. However, the Division Bench of this Court had clearly held as under:

> *"It is true that the aforesaid settlement was a one time settlement giving benefit of regularization to all those who have rendered five years service on 30.4.1991 but this does not mean that those completing five years' service thereafter should be denied the benefit of regularization. This, in our opinion, will create discontentment and would be otherwise unjust and unfair. Under the circumstances, we are of the opinion that the settlement should govern regularization of all those employees who are completing five years of uninterrupted service either on or after 30.4.1991, all other conditions of the settlement remaining the same."*

It is, therefore, clear that applying the decision of the apex court and of this Court, the petitioner, who had completed five years of service, was entitled to regularization and was also entitled to benefit of seniority. However, the State Administrative Tribunal, while dismissing the petition in limini of the petitioner as well as the review petition filed by him, had held that since there was no post of Assistant Foreman, therefore, the petitioner was not entitled to be appointed as such. In our view, even in case the post of Assistant Foreman was not available the petitioner could have been treated as *Beldar* to which post he was appointed earlier. Whatever nomenclature is given to the post, he could continue as

Beldar/ daily wager on the same terms and conditions to which he was appointed initially and, therefore, the order passed by the State Administrative Tribunal dismissing the Original Application filed by the petitioner cannot be said to be in accordance with law. In view of the fact that the petitioner's services were retrenched long back and that the respondents had allegedly issued a cheque for one month salary of the petitioner in accordance with Section 25-F of the Industrial Disputes Act, we are of the opinion that the petitioner was entitled to be regularized in service as daily wager and after five years as work charge employee keeping in view the post service rendered by him. However, since the petitioner had been out of job and had not been in service, he is not entitled to any back wages but he will be re-employed by the respondents within a period of two months from today and shall also be entitled to seniority keeping in view the part services rendered by him. The writ petition filed by the petitioner is accordingly allowed and the orders passed by the State Administrative Tribunal are set aside. There is no order as to costs.

(Deepak Gupta), J.

(V.K. Ahuja), J.

August 6, 2007. (trs)